TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 621

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WILLIAM RANDOLPH SCHARTON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

FILED JANUARY 5, 1932

(36,435)

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1 In United States District Court, District of Massachusetts

No. 10588, Criminal Docket

THE UNITED STATES OF AMERICA, BY INDICTMENT

v.

WILLIAM RANDOLPH SCHARTON

Indictment

Returned into court by grand jury and filed August 18, 1931

In the District Court of the United States of America in and for the District of Massachusetts, June term thereof, A. D. 1931. Held at Boston, Massachusetts.

The grand jurors of the United States of America, duly impaneled and sworn in the District Court of the United States for the District of Massachusetts at the June term of said court in the year 1931, and inquiring in and for said district, upon their oath do present and charge:

That William Randolph Scharton, now or late of the town of Reading, State of Massachusetts, hereinafter sometimes called the defendant, on, to wit, March 11, 1927, at the city of Boston, in the State of Massachusetts, in the district of Massachusetts, and within the jurisdiction of this court, unlawfully did willfully and
2 knowingly attempt to defeat and evade a large part, to wit, $10,708.03, of a tax upon his net income for the calendar year 1926, which tax was imposed by an act of Congress approved February 26, 1926, entitled "An act to reduce and equalize taxation, to provide revenue, and for other purposes," which said unlawful and willful attempt to defeat and evade said tax was an offense involving the attempting to defraud the United States of America and was by the means and in the manner following, that is to say:

That the said William Randolph Scharton, during the calendar year 1926, was an individual, a citizen of the United States, who was married and living with his wife, and who had two dependents, and whose legal residence was at the town of Reading aforesaid and principal place of business was at Boston, both being within the State and district aforesaid, and within the internal revenue collection district of Massachusetts, and who was then and there a person required by law, after the close of the calendar year 1926 and on or before March 15, 1927, to make to the collector of internal revenue for said collection district, under oath, a return for the calendar year 1926, stating specifically the items of his gross income and the deductions

and credits allowed by Title II (income tax) of the said act of Congress, by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that the regular annual accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that during the calendar year 1926, he, the said defendant, derived and had a gross income amounting to more than $5,000.00, to wit, $79,215.00, derived as follows, that is to say:

Receipts from profession		$89,000.00
Less:		
Salaries	$6,240.00	
Rents, repairs and other expenses	5,720.00	
		11,960.00
Profit from profession		77,040.00
Dividends received		2,175.00
Total income		79,215.00

and that during the said calendar year 1926 the said defend-
3 ant was entitled to and allowed by the provisions of said Title II of said Act of Congress, deductions (other than those allowed, as above set forth, in computing gross income) in the sum of, to wit, $435.00, and no more, on account of the following:

Contributions	$435.00

and that he, the said defendant, had and derived and received a net income, to wit, the gross income, less the deductions allowed by law, of, to wit, $78,780.00, upon which said net income of said defendant for said calendar year 1926 an income tax of, to wit, $10,839.40, under the act of Congress aforesaid, became and was due by him on, to wit, March 15, 1927, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said collector of internal revenue for the said internal revenue collection district of Massachusetts; and that the defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid by reason of the said tax imposed by the aforesaid act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year 1926 were as aforesaid, on, to wit, March 11, 1927, at Boston aforesaid, in the State and district aforesaid, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $10,708.03, of said tax upon his net income for the calendar year 1926, and as overt acts in so unlawfully and wilfully and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 10, 1927, at the town of Reading, in the State and district aforesaid, make under oath an income tax return for said calendar year 1926 and thereafter and on, to wit, March 11, 1927, at the city of Boston, in the State and district aforesaid, did file and cause to be filed with said collector of internal revenue for the said internal revenue col-

lection district of Massachusetts, said income tax return for the calendar year 1926, prepared and sworn to as aforesaid, stating
4 specifically therein the items of his gross income for said calendar year 1926 to have been the sum of $14,040.00, and no more, derived as follows:

Receipts from profession		$23,000.00
Less:		
Salaries	$6,240.00	
Rent, repairs and other expenses	5,720.00	
		11,960.00
Profit from profession		11,040.00
Dividends received		3,000.00
Total income		14,040.00

and stating specifically the items of deductions (other than those taken, as above set forth, in computing gross income) allowed by the act of Congress aforesaid for said calendar year 1926 to have been the sum of $435.00 on account of the following:

Contributions	$435.00

and stating therein no other items of deductions, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1926 to have been the sum of $13,605.00, and no more, and showing the total tax due and payable by him thereon to have been the sum of $131.37, and no more.

And the said defendant then and there, to wit, March 14, 1927, paid to the collector of internal revenue for the said internal revenue collection district of Massachusetts the sum of, to wit, $32.85 (and thereafter the sum of $98.82), and no more, and furthermore, the said defendant has never made and filed with the said collector of internal revenue any other income tax return for said calendar year 1926, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said collector or to any other proper officer of the United States of any sums of money on account of his said tax debt for said calendar year 1926 except said sum of, to wit, $131.37; against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

5 Second count

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge:

That William Randolph Scharton, now or late of the town of Reading, State of Massachusetts, hereinafter sometimes called the defendant, on, to wit, April 16, 1928, at the city of Boston, in the State of Massachusetts, in the district of Massachusetts, and within the jurisdiction of this court, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $13,972.58,

of a tax upon his net income for the calendar year 1927, which tax was imposed by an act of Congress approved February 26, 1926, entitled "An act to reduce and equalize taxation, to provide revenue, and for other purposes," which said unlawful and willful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

That the said William Randolph Scharton, during the calendar year 1927, was an individual, a citizen of the United States, who was married and living with his wife, and who had two dependents, and whose legal residence was at the town of Reading aforesaid and whose principal place of business was at Boston both being within the State and district aforesaid, and within the internal revenue collection district of Massachusetts, and who was then and there a person required by law, after the close of the calendar year 1927 and on or before March 15, 1928, to make to the collector of internal revenue for said collection district, under oath, a return for the calendar year 1927, stating specifically the items of his gross income and the deductions and credits allowed by Title II (income tax) of the said act of Congress, by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that the regular annual accounting period of the defendant was on the basis of the calendar year, and not on the basis of a fiscal year, and by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that during the calendar year 1927, he, the said defendant, derived and had a gross income amounting to more than $5,000.00, to wit, $112,895.80, derived as follows, that is to say:

Receipts from profession		$143,400.00
Less:		
Salaries	$17,240.00	
Rent	2,220.00	
Other expenses	13,069.20	
		32,529.20
Profit from profession		110,870.80
Dividends received		2,025.00
Total income		112,895.80

and that during the said calendar year 1927 the said defendant was entitled to and allowed by the provisions of said Title II of said act of Congress, deductions (other than those allowed, as above set forth, in computing gross income) in the sum of, to wit, $7,342.14, and no more, on account of the following:

Taxes paid	$942.14
Stock loss	6,400.00
Total deductions	7,342.14

and that he, the said defendant, had and derived and received a net income, to wit, the gross income, less the deductions allowed by law

of, to wit, $105,553.66, upon which said net income of said defendant for said calendar year 1927 an income tax of, to wit, $17,315.91, under the act of Congress aforesaid, became and was due by him on, to wit, March 15, 1928, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said collector of internal revenue for the said internal revenue collection district of Massachusetts; and that the defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid by reason of the said tax imposed by the aforesaid act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year 1927 were as aforesaid, on, to wit, April 16, 1928, at Boston aforesaid, in the State and district aforesaid, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $13,972.58, of said tax upon his said net income for the calendar year 1927, and as overt acts in so unlawfully and willfully and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 13, 1928, at the town of Reading, in the State and district aforesaid, make under oath an income tax return for said calendar year 1927 and thereafter and on, to wit, April 16, 1928, at the city of Boston, in the State and district aforesaid, did file and cause to be filed with said collector of internal revenue for the said internal revenue collection district of Massachusetts, said income tax return for the calendar year 1927, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year 1927 to have been the sum of $42,970.80, and no more, derived as follows:

Receipts from profession		$72,500.00
Less:		
Salaries	$17,240.00	
Rent	2,220.00	
Other expenses	13,069.20	
		32,529.20
Profit from profession		39,970.80
Dividends received		3,000.00
Total income		42,970.80

and stating specifically the items of deductions (other than those taken, as above set forth, in computing gross income) allowed by the act of Congress aforesaid for said calendar year 1927 to have been the sum of $942.14, on account of the following:

Taxes paid	$942.14

and stating therein no other items of deductions, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1927 to have been the sum of $42,028.66, and no more, and showing the total tax due

and payable by him thereon to have been the sum of $3,343.33, and no more.

And the said defendant then and there, to wit, April 16, 1928, paid to the collector of internal revenue for the said internal revenue collection district of Massachusetts the sum of, to wit, $884.24 (and thereafter the sum of $2,759.09), and no more, and furthermore, the said defendant has never made and filed with the said collector of internal revenue any other income tax return for the said calendar year 1927, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said collector or to any other proper officer of the United States of any sums of money on account of his said tax debt for said calendar year 1927 except said sum of, to wit, $3,343.33; against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

HAVEN PARKER,
Asst. United States Attorney.

A true bill.

H. L. BURRAGE,
Foreman of the Grand Jury.

This indictment was presented by the grand jury at the June term of this court, A. D. 1931, when, to wit, August 18, 1931, the Honorable James A. Lowell, district judge, sitting, the said William Randolph Scharton was set to the bar and had this indictment read to him; whereupon he said that thereof he was not guilty.

On the fourth day of September, the following plea in bar was filed by defendant:

In United States District Court

Plea in bar

Filed September 4, 1931

Now comes William R. Scharton, defendant in the above-entitled cause and having heard the indictment herein read says that he was not guilty of the said alleged offenses therein charged against him at any time and more particularly within three years next before the finding of said indictment against him; that the first count of said indictment alleges that on March 11, 1927, he unlawfully did wilfully and knowingly attempt to defeat and evade a large part of a tax upon his net income for the calendar year 1926, and count 2 of said indictment charges that on April 16, 1928, he did likewise respecting a large part of his tax upon his net income for the calendar year 1927; that said indictment was returned into court on August 18, 1931, as appears of record herein; and that the said alleged offenses ought not now be prosecuted, tried, or punished.

And this he the said William R. Scharton is ready to verify.

Wherefore he prays judgment that by the court here he may be dismissed and discharged from the said premises and the said indictment quashed.

E. MARK SULLIVAN,
DANIEL A. SHEA,
Attorneys for the Defendant.

This cause was thence continued to the present September term, A. D. 1931, when, to wit, November 20, 1931, said cause comes on to be heard on the aforementioned plea in bar, the Honorable James A. Lowell, district judge, sitting, and it is ordered by the court that said plea in bar be sustained and the indictment quashed, and said plea in bar is sustained and the indictment quashed accordingly, and the Government's exceptions noted and rights saved, and said order is as follows:

In United States District Court

Order sustaining plea in bar and quashing indictment

November 20, 1931

LOWELL, J.: This case came on to be heard by me, upon the defendant's plea in bar to the indictment. Upon hearing arguments of counsel for the defendant and of the United States attorney, it is ordered that, as the indictment was not brought within three years of the offenses charged against the defendant, and as the offenses charged by the indictment do not involve the defrauding or attempting to defraud the United States or an agency thereof, the defendant's plea in bar is sustained and the indictment is quashed. The Government's exceptions to this order are noted and the Government's rights thereto are saved.

By the court:

FRANK H. MASON,
Deputy Clerk.

J. A. L.
D. J.
Nov. 20, 1931.

10 In United States District Court

Petition for appeal from order quashing indictment

Filed and allowed December 17, 1931

To the Judges of the United States District Court for the District of Massachusetts:

In the case herein above named, the United States of America deeming the court to be in error in the order and decree made and entered herein on the twentieth day of November in the year one thousand nine hundred and thirty-one, hereby appeals from said order and decree, and it therefore prays that this appeal may be

allowed and that a transcript of the record, proceedings, and papers on which said order and decree was made after due authentication, may be sent to the United States Supreme Court.

UNITED STATES OF AMERICA,
(By its attorney.)
FREDERICK H. TARR,
United States Attorney.

Allowed
J.A.L.
D.J.
Dec. 17, 1931.

HAVEN PARKER,
Assistant United States Attorney.

In United States District Court

Assignment of errors

Filed December 17, 1931

Now comes the United States of America and, in connection with its appeal, makes the following assignment of errors; namely:

1. The court erred in sustaining the defendant's plea in bar.
2. The court erred in quashing the indictment.
3. The court erred in ruling that the defendant should not be prosecuted, tried, or punished.
4. The court erred in ruling that as the indictment was not brought within three years of the commission of the offenses charged by the indictment, it was barred by the provisions of section 1110 (a), (Title 18 U. S. C., section 585).
5. The court erred in ruling that the offenses charged by the
11 indictment were not offenses involving the defrauding or attempting to defraud the United States or an agency thereof.
6. The court erred in ruling that to evade the greater part of the income tax is not an offense involving the defrauding or attempting to defraud the United States or an agency thereof.
7. The court erred in ruling that the offenses charged by the indictment did not come within the six-year proviso of section 1110 (a) of the revenue act of 1926 (Title 18, U. S. C., section 585), in that they were offenses involving the defrauding or attempting to defraud the United States or an agency thereof.

UNITED STATES OF AMERICA,
(By its attorneys.)
FREDERICK H. TARR,
United States Attorney.
By HAVEN PARKER,
Assistant United States Attorney.

12 (Citation in usual form showing service on William R. Scharton, omitted in printing.)

13 (Clerk's certificate to foregoing transcript omitted in printing.)

14 In Supreme Court of the United States

Statement of points relied upon, and designation of entire record for printing

Filed Jan. 8, 1932

Pursuant to rule 13 of this court, appellant specifies the following points upon which it intends to rely in the above-entitled cause:

1. The District Court erred in sustaining appellee's plea in bar.

2. The District Court erred in holding that the offenses charged did not involve the defrauding or attempting to defraud the United States or any agency thereof within the meaning of the first proviso of section 1110 (a) of the revenue act of 1926 (c. 27, 44 Stat. 9, 114–115), and that the six-year period of limitations provided therein does not apply.

3. The District Court erred in holding that the three-year period of limitations prescribed by section 1110 (a) of the revenue act of 1926 (c. 27, 44 Stat. 9, 114–115), applies and upon that ground sustaining appellee's plea in bar.

The appellant deems the entire record, as filed, to be necessary for the consideration of the above contentions.

THOMAS D. THACHER,
Solicitor General.

Dated JANUARY 8, 1932.

(File endorsement omitted.)

[Indorsement on cover:] File No. 36,435. Massachusetts, D. C. U. S. Term No. 621. The United States of America, appellant, vs. William Randolph Scharton. Filed January 5, 1932. File No. 36,435.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

No. 621

In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM RANDOLPH SCHARTON

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 621

UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM RANDOLPH SCHARTON

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause.

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the judgment here complained of is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

B

DATES OF JUDGMENT AND APPLICATION FOR APPEAL

The judgment of the District Court was entered November 20, 1931. (R. 9.)[1] The application for appeal was made December 17, 1931, and allowed the same day. (R. 10.) The case was docketed in this Court on January 5, 1932.

C

NATURE OF THE CASE

Appellee was indicted on August 18, 1931, in the United States District Court for the District of Massachusetts for attempting to defeat and evade his income taxes for the years 1926 and 1927 in the respective amounts of $10,708.03 and $13,972.58 (R. 1–8), under the provisions of Section 1114 (b) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 116.

Under date of September 4, 1931, appellee filed a "Plea in Bar" praying that he be dismissed and discharged and that the indictment be quashed on the ground that the indictment charged that the offenses were committed on March 11, 1927, and April 16, 1928, respectively, which in each instance was more than three years next before the finding of the indictment. (R. 8–9.)

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[1] All references to the record are to the pages of the certified unprinted record prepared by the clerk of the District Court and on file with the clerk of this Court. The record has not yet been printed.

On November 20, 1931, the court held that the offenses charged did not involve the defrauding or attempting to defraud the United States or any agency thereof, that therefore the three-year statute of limitations and not the six-year period of limitations prescribed in Section 1110 (a) of the Revenue Act of 1926 (44 Stat. 114–115) applied, and accordingly entered an order sustaining the plea in bar and quashing the indictment. (R. 9.)

From the above order and judgment the Government has appealed to this Court. (R. 10–12.)

D

CASES SUSTAINING JURISDICTION

United States v. *Goldman*, 277 U. S. 229, 236–237.

United States v. *Barber*, 219 U. S. 72, 78.

United States v. *Oppenheimer*, 242 U. S. 85, 86.

United States v. *Harry Murdock*, decided November 23, 1931, No. 38, October Term, 1931.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

G. A. YOUNGQUIST,
Assistant Attorney General.

SEWALL KEY,
JOHN H. MCEVERS,
Special Assistants to the Attorney General.

JANUARY, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

No. 321

In the Supreme Court of the United States

October Term, 1951

THE UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM RANDOLPH SCHEFFER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES

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CITATIONS

Cases:

Capone v. *United States*, 51 F. (2d) 609, certiorari denied, 284 U. S. xviii 7, 8, 10

Curley v. *United States*, 130 Fed. 1, certiorari denied, 195 U. S. 628 7

Emmich v. *United States*, 298 Fed. 5 9

Guzik v. *United States*, decided December 10, 1931, reported in Prentice-Hall Fed. Tax Service (1932) Vol. 1, p. 391 9

Haas v. *Henkel*, 216 U. S. 462 7

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Hyde v. *Shine*, 199 U. S. 62 7

Laing v. *Slingerland*, 12 Ont. Pr. 366 8

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McCulloch v. *Maryland*, 4 Wheat. 316 8

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State v. *Bernstein*, 129 Iowa 520 8

United States v. *Plyler*, 222 U. S. 15 7

United States v. *Walter*, 263 U. S. 15 7

United States v. *Foster*, 233 U. S. 515 7

United States v. *Keitel*, 211 U. S. 370 7

United States v. *Stone*, 135 Fed. 392 7

United States v. *LaFontaine*, decided December 4, 1931, reported in C. C. H. (1931), Vol. III, p. 9326 10

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Statutes:

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 621

THE UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM RANDOLPH SCHARTON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the District Court (R. 7) has not been reported.

JURISDICTION

The judgment to be reviewed was entered November 20, 1931 (R. 7). An appeal to this Court was allowed on December 17, 1931 (R. 7–8). The jurisdiction of this Court to review by direct appeal the judgment involved is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the crime of attempting in any manner to evade or defeat any tax imposed by the Revenue Act of 1926 or the payment thereof, as defined by Section 1114(b) of the Revenue Act of 1926, constitute an offense "involving the defrauding or attempting to defraud the United States or any agency thereof * * * in any manner" within the meaning of Section 1110 (a) of that Act prescribing a six-year statute of limitations for such offenses?

STATUTE INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9, 114–115, 116–117:

> SEC. 1110. (a) The Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws," approved July 5, 1884, as amended, is reenacted without change, as follows:
>
> "That no person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense: *Provided*, That for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, the period of limitation shall be

six years, but this proviso shall not apply to acts, offenses, or transactions which were barred by law at the time of the enactment of the Revenue Act of 1924: * * *" (U. S. C. Sup. V, Title 18, Sec. 585.)

SEC. 1114. (b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (U. S. C. Sup. V, Title 26, Sec. 1266.)

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. U. S. C. Sup. V, Title 26, Sec. 1267.)

STATEMENT

On August 18, 1931 (R. 6) appellee was indicted in the United States District Court for the District of Massachusetts under Section 1114 (b) of the Revenue Act of 1926, *supra*. The indictment contained two counts, the first charging an attempt to defeat and evade an income tax for the year 1926 in the sum of $10,708.03 by falsely understating taxable income for that year (R. 1–3), and the second charging an attempt to defeat and evade an income tax for the year 1927 in the sum of $13,972.58 by falsely understating taxable income for that year (R. 3–6).

On September 4, 1931, appellee filed a "plea in bar" praying that he be dismissed and discharged and that the indictment be quashed on the ground that the offenses were alleged to have been committed on March 11, 1927, and April 16, 1928, respectively, which in each instance was more than three years before the finding of the indictment. (R. 6–7.) On November 20, 1931, the court held that the offenses charged did not involve "the defrauding or attempting to defraud the United States or any agency thereof," and, therefore, that the three-year period and not the six-year period of limitations prescribed in Section 1110 (a) of the Revenue Act of 1926, *supra*, applied. In accordingly entered an order sustaining the plea in bar and quashing the indictment. (R. 7.) The Government thereupon took this appeal. (R. 7–8.)

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred (R. 9)—

1. In sustaining appellee's plea in bar.

2. In holding that the offenses charged did not involve the defrauding or attempting to defraud the United States or any agency thereof within the meaning of the first proviso of Section 1110 (a) of the Revenue Act of 1926, *supra,* and that the six-year period of limitations provided therein did not apply.

3. In holding that the three-year period of limitations prescribed by Section 1110 (a) of the Revenue Act of 1926, *supra,* applied.

SUMMARY OF ARGUMENT

An attempt to obstruct or defeat the lawful functions of any department of the Government, to cheat the Government out of property or money which it possesses, or to which it is entitled, constitutes an attempt to defraud the United States, where the attempt is by means of deceit, craft, trickery, misrepresentation, or chicanery. An attempt to defeat and evade a tax is an attempt to deprive the Government of money to which it is entitled and obstructs a function which is vital to the very existence of government. "Evade" and/or "defeat" implies deceit, craft, trickery, misrepresentation, and an intent to defraud. Therefore an attempt to defeat and evade a tax is an attempt to defraud the United States. It

follows that fraud is an ingredient of the offense of attempting to defeat and evade a tax, and therefore the six-year statute of limitations prescribed by the first proviso of Section 1110 (a) of the Revenue Act of 1926, *supra,* applies.

ARGUMENT

THE SIX-YEAR STATUTE OF LIMITATIONS PRESCRIBED IN SECTION 1110 (A) OF THE REVENUE ACT OF 1926 APPLIES TO THE PRESENT CASE

Section 1110 (a) of the Revenue Act of 1926, *supra,* provides:

> That no person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense: *Provided, That for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, the period of limitation shall be six years* * * *. (Italics ours.)

Section 1114(b) of the same Act, *supra,* declares that—

> Any person * * * who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall * * * be guilty of a felony * * *.

The question presented is whether the offense thus defined involves "the defrauding or attempting to defraud the United States or any agency thereof," within the meaning of Section 1110(a), *supra*.[1]

It is well settled that attempts to obstruct or defeat the lawful functions of any department of the Government of the United States (*Haas* v. *Henkel*, 216 U. S. 462, 479–480; *United States* v. *Plyler*, 222 U. S. 15, 17; *United States* v. *Walter*, 263 U. S. 15, 18; *Curley* v. *United States*, 130 Fed. 1, 11, certiorari denied (C. C. A. 1st), 195 U. S. 628) or to cheat the Government out of property or money which it possesses (*United States* v. *Foster*, 233 U. S. 515, 525–526; *United States* v. *Keitel*, 211 U. S. 370, 393–394; *Hyde* v. *Shine*, 199 U. S. 62, 82–83) or to which it is entitled (*Capone* v. *United States*, 51 F. (2d) 609, 615 (C. C. A. 7th), certiorari denied, 284 U. S. xviii; *United States* v. *Stone*, 135 Fed. 392, 399 (N. J.)) constitute *attempts to defraud the United*

[1] This question is one of first impression in this Court, and so far as the Government has been able to ascertain has not been passed upon by any Circuit Court of Appeals. Several District Courts, in unreported decisions rendered without opinions, have adopted the construction for which the Government contends. An examination of the legislative history of the statutory provisions involved throws no light on the proper construction except that it appears from S. R. 398, 68th Cong., 1st sess., p. 44, that the proviso was inserted in Section 1110 (a) to bring the limitations in that section into harmony with the general limitation provisions of R. S., Section 1044 as amended.

States where the attempts are by means of deceit, craft, trickery, misrepresentation, chicanery, or other dishonest methods or schemes (*Hammerschmidt* v. *United States,* 265 U. S. 182, 188). That an attempt to evade or defeat a tax due the Government is tantamount to, possesses every element of, and constitutes an attempt to defraud the United States, is at once apparent. An attempt to defeat or evade a tax involves not only an attempt to deprive the Government of property or money to which it is entitled (*Capone* v. *United States,* 51 F. (2d) 609, 615 (C. C. A. 7th)) thus causing it pecuniary loss, but it also obstructs the collection of the revenue which "is essential to the very existence of government" (*McCulloch* v. *Maryland,* 4 Wheat. 316, 428). "Evasion" implies avoidance by device or strategy or concealment where good faith requires disclosure (see *Murray* v. *Brotherhood of Am. Yeomen,* 180 Iowa 626, 648; *State* v. *Bernstein,* 129 Iowa 520, 522); and "intent to defeat" is equivalent to "intent to defraud" (*Laing* v. *Slingerland,* 12 Ont. Pr. 366). No resort to lexicographers is necessary, for the plain and natural meaning of an attempt to evade or defeat any tax imposed by the United States necessarily involves an attempt to defraud the United States. Other acts may also constitute attempts to defraud the United States, but an attempt to evade or defeat the taxes without which government could not exist certainly does.

The courts and the Board of Tax Appeals have continuously treated any attempt to evade or defeat

a tax as an offense involving fraud. In *Levy* v. *United States,* 271 Fed. 942 (C. C. A. 3rd), the defendant was charged in one count with perjury and in another with having attempted to defeat and evade an income tax by the filing of a false amended return. In distinguishing between the two offenses the court said (p. 943):

> While falsity in the amended return was an element of the offense, perjury was not involved; the essence of the offense was an act with intent, together amounting to an attempt, to defeat and evade a tax assessment by a false and *fraudulent* return. (Italics ours.)

In *Emmich* v. *United States,* 298 Fed. 5, (C. C. A. 6th), the court considered an indictment charging an attempt to defeat and evade a tax, and in considering the nature of the offense said (p. 9):

> The real character of the offense lies, not in the failure to file a return, or in the filing of a false return, but rather in the attempt to *defraud* the government by evading the tax. (Italics ours.)

In *Guzik* v. *United States* (C. C. A. 7th, No. 4533), decided December 10, 1931, reported in Prentice-Hall Fed. Tax Service (1932), Vol. 1, p. 391, 392 (pending before this Court on petition for certiorari, No. 680, October Term, 1931), the court had before it an indictment similar to that considered in the *Emmich* case, and concerning the nature of the offense stated:

> The crime is complete when the taxpayer, as here alleged, knowingly and willfully files a *fraudulent* tax return with intent to evade or defeat a part, or all, of his tax. (Italics ours.)

In *Capone* v. *United States, supra,* in speaking of the reason for the 1918 amendment of Section 35 of the Criminal Code (U. S. C., Ttitle 18, Sec. 80), the court said (p. 614):

> The amendment was enacted a few years after the passage of the Revenue Act calling for the payment of income taxes, and assessment and collection of which supplied a fertile field *for the practice of fraud by those who would so evade federal taxes.* Such increased opportunity for *fraud* upon the government might account for the action of Congress in passing the amendment. (Italics ours.)

In *United States* v. *LaFontaine* (D. C. Md.) (December 4, 1931), reported in C. C. H. (1931), Vol. III, p. 9326, 9328, in passing sentence upon a plea of guilty to an indictment charging an attempt to evade and defeat a tax, the court said with relation to the nature of the offense:

> But nevertheless the resultant act, whatever the motive, was in fact an *attempt to defraud the Government* of taxes legally due. (Italics ours.)

It seems clear from the plain language of the statute and the authorities that an attempt to defraud the United States is always an ingredient

of the offense of attempting to evade and defeat a tax under Section 1114(b), *supra*. Where an attempt to defraud the United States is an ingredient of the offense such offense falls under the proviso of Section 1110(a), fixing a six-year period of limitation. See *United States* v. *Noveck*, 271 U. S. 201, 204. In the *Noveck* case this Court had before it the provision of Section 1044 of the Revised Statutes as amended by the Act of November 17, 1921, c. 124, 42 Stat. 220, which, like Section 1110(a) here involved, prescribed a six-year period of limitations for "offenses involving the defrauding or attempts to defraud the United States." With relation to such statute this Court said (p. 204):

> Its purpose is to apply the six-year period to every case in which defrauding or an *attempt to defraud the United States is an ingredient* under the statute defining the offense. (Italics ours.)

It is therefore submitted that the offense of willfully attempting "in any manner to evade or defeat any tax" involves the "defrauding or attempting to defraud the United States" and that the six-year statute of limitations applies.

This position is strengthened by the fact that subdivision (c) of Section 1114, *supra*, makes it a felony for any person to aid, assist, procure, counsel, or advise "the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or *fraudulent return*, affidavit, claim, or document."

Such a return could not be "fraudulent" unless it was intended to defraud, and it very obviously could defraud only the Government. It would therefore seem to be clear that the crime of aiding, assisting, procuring, counseling, or advising the preparation of a "fraudulent return" is an offense "involving the defrauding or attempting to defraud the United States" within the meaning of Section 1110 (a) providing a six-year statute of limitations. It is scarcely conceivable that Congress intended to prescribe a six-year statute of limitations for one who aids, assists, procures, counsels, or advises the preparation of a "fraudulent return" but only a three-year statute of limitations for the principal offender punishable under Section 1114 (b) providing exactly the same punishment for each.

CONCLUSION

The decision of the court below is erroneous and should be reversed.

Respectfully submitted.

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MARCH, 1932.

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In the

Supreme Court of the United States.

October Term, 1931.

No. 621.

The United States of America,
Appellant,

v.

William Randolph Scharton.

APPELLEE'S BRIEF.

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In the

Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 621.

THE UNITED STATES OF AMERICA,
APPELLANT,
v.
WILLIAM RANDOLPH SCHARTON.

APPELLEE'S BRIEF.

STATEMENT OF THE CASE.

The appellant, United States of America, appeals from the ruling of the District Court of the United States for the District of Massachusetts, sustaining the plea in bar of appellee herein to an indictment returned against him in that Court (R. pp. 7 and 8).

The appellee was indicted on an indictment in two counts for alleged violations of section 1114 (*b*) of the Revenue Act of 1926 (44 Stat. 116; U.S.C. title 26, sec. 1266) (R. pp. 1, 2, 3, 4, 5, 6).

The indictment in each count thereof alleges that the defendant "unlawfully did willfully and knowingly attempt to defeat and evade a large part . . . of a tax upon his net income for the calendar year . . ."

The tax involved in the first count is for the calendar year 1926, and in the second count for the calendar year 1927. The offense is laid in the District of Massachusetts, on March 11, 1927, in the first count, and on April 16, 1928, in

the second count. The first count alleges that said attempt to defeat and evade said tax "was an offense involving the attempting to defraud the United States of America," but no such allegation is to be found in the second count. In each of said counts "overt acts" are alleged on certain dates, but an examination of the indictment will show that in the first count no "overt act" was committed after March 14, 1927, and in the second count no "overt act" was committed after April 16, 1928. Neither count formally avers a continuing offense.

To this indictment the appellee, on September 4, 1931, filed a plea in bar, praying judgment by the Court that he be dismissed and discharged, and said indictment quashed, on the ground that in each count it appears the offense charged was committed more than three years next prior to the finding of the indictment, and for this reason the indictment is barred by the Statute of Limitations for internal-revenue offenses (sec. 1110 (*a*), Revenue Act of 1926) (R. p. 6).

The District Court (Lowell, J.), having considered the appellee's plea in bar, on November 20, 1931, held that, as the indictment was not brought within three years of the offenses charged against the defendant, and as the offenses charged by the indictment did not involve the defrauding or attempting to defraud the United States or any agency thereof, the defendant's plea in bar was sustained and the indictment quashed (R. p. 7).

The Government petitioned for appeal from the order quashing said indictment (R. p. 7).

Statutes Involved.

Section 1114 (*b*) of the Revenue Act of 1926 (44 Stat. 116; U.S.C. title 26, sec. 1266) provides:

> "Any person required under this title to collect, account for and pay over any tax imposed by this title,

who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

Section 1110 (*a*) of the Revenue Act of 1926 (44 Stat. 114; U.S.C. title 18, sec. 585), the Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws," approved July 5, 1883, as amended, is re-enacted without change, as follows:

"No person shall be prosecuted, tried or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense: Provided, That for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, the period of limitation shall be six years, (but this proviso shall not apply to acts, offenses, or transactions which were barred by law on June 2, 1924: . . .)."

Question Presented.

The sole question presented by the record is whether the limitation applicable to this statute is the three-year Statute of Limitations, or the six-year period prescribed in section 1110 (*a*) of the Revenue Act of 1926.

ARGUMENT.

Before considering the real issue in this case, there are two considerations that ought to be disposed of, viz., continuous offenses and "overt acts."

Continuous Offenses.

It cannot rightfully be argued that these offenses are continuous offenses, some portion of which is within the three years next preceding the finding of the indictment, for the following reasons:

(*a*) The offenses as charged, viz., two specific attempts to defeat and evade one's income tax, are by their very nature instant and not continuous offenses, even though it is alleged that some part of the income tax payable remains unpaid at the date the indictment was returned into court.

> "But whatever this may be it constitutes the criminal act of withholding [pension money], which is a thing which must be capable of proof to a jury, and which, when it once exists, renders the party liable to indictment. There is in this but one offense. When it is committed the party is guilty and is subject to criminal prosecution and from that time also the Statute of Limitations applicable to the offense begins to run . . . the crime as shown in this case was not a continuous one . . ."

United States v. *Irvine*, 98 U.S. 450.

(*b*) Nor does the indictment either directly or formally charge this offense to be continuous.

> "An indictment must charge an offense directly and not inferentially."

Brewer v. *United States*, 287 Fed. 636.

"Overt Acts."

These words, "overt acts," appear, not in the charging, but in the descriptive, part of this indictment. If the alleged acts of the appellee, characterized in the indictment as "overt acts," are an essential element in this indictment, then it will be observed that none of them is within the three years next preceding the finding of the indictment. The appellee is charged with making oath to his returns on March 10, 1927 (R. p. 2), and on April 16, 1928 (R. p. 5), and with filing his tax returns on March 11, 1927 (R. p. 2), and on April 16, 1928 (R. p. 5).

The rule of law respecting "overt acts" and the Statute of Limitations is stated in *United States* v. *Bradford*, 148 Fed. 413 (affirmed 152 Fed. 216; certiorari denied, 206 U.S. 563), where this Court said:

> "The moment the conspiracy is formed and an 'overt act' is committed by one of the conspirators, that moment the offense can be prosecuted and the statute of limitations begins to run as regards that conspiracy and that particular 'overt act'."

Since the offenses charged in the indictment are not continuous offenses—nor indeed does the indictment pretend to so charge them—and none of the so-called "overt acts" nor either of the specific acts charged in the charging part of the indictment is within the three years next prior to returning the indictment into court, this appeal may not be sustained unless the six-year period of limitations is applicable.

The Issue.

The issue, therefore, is whether the offense of attempting to defeat and evade one's income tax is an attempt to defraud the Government within the meaning of section 1114 (*b*) of the Revenue Act of 1926.

I.

NO INTERNAL-REVENUE OFFENSE IS WITHIN THE PROVISO CLAUSE OF SECTION 1110 (*a*) OF THE REVENUE ACT OF 1926 UNLESS THE ELEMENT OF "DEFRAUDING OR ATTEMPTING TO DEFRAUD" THE UNITED STATES IS MADE AN ESSENTIAL INGREDIENT THEREOF EITHER (A) *expressly* BY THE TERMS OF THE STATUTE CREATING THE OFFENSE OR (B) *explicitly* BY THE ESSENTIAL DEFINITION OF THE WORDS USED IN SAID STATUTE.

> "Its purpose is to apply the six year period to either case in which defrauding or attempting to defraud is an ingredient under the statute defining the offense."
>
> *United States* v. *Noveck*, 271 U.S. 201.

See also *Bailey* v. *United States*, 13 Fed. (2d) 325 (C.C.A.), and—

Capone v. *United States*, 51 Fed. (2d) 609, 619 (C.C.A.).

In the Noveck case this Court was dealing with the six-year proviso of the General Statute of Limitations (Rev. Stat. sec. 1044, amended by Act of November 17, 1921, sec. 582, title 18, U.S.C.) applicable to other than capital offenses. The words and phrasing of that statute are substantially indentical with those used in section 1110 (*a*) of the Revenue Act of 1926.

In the instant indictment it is alleged in the first count of the indictment that—

> "said unlawful and wilful attempt to defeat and evade said tax was an offense involving the attempt to defraud the United States of America" (R. p. 1).

Regarding the use of a similar phrase in the Noveck indictment this Court said:

> "That allegation does not affect the charge; it need not be proved and may be rejected as mere surplusage."
>
> *United States* v. *Noveck*, 271 U.S. 201.

II.

BUT THE ELEMENT OF "DEFRAUDING OR ATTEMPTING TO DEFRAUD" THE UNITED STATES IS NOT MADE AN ESSENTIAL INGREDIENT OF THE OFFENSE CREATED BY SECTION 1114 (*b*) REVENUE ACT OF 1926, VIZ., ATTEMPTING TO DEFEAT AND EVADE ONE'S INCOME TAX EITHER—

(A) Expressly by the terms of that statute, or—

(B) Explicitly by reason of the essential definition of the words of such statute.

(A) The element of defrauding the United States is not *expressly* made an ingredient of the offense of defeating or evading one's income tax by the terms of the statute creating this offense.

The truth of this proposition is at once apparent upon a reading of the statute itself (1114 (*b*), Revenue Act, 1926).

In this respect the statute in question differs from, *e.g.*, sections 261 and 306, title 26, U.S.C., which denounce the offense of unlawfully carrying on the business of a distiller, "with intent to defraud the United States of the tax on the spirits distilled"; and the offense denounced by section 29 of the Criminal Act, viz., uttering and publishing a forged endorsement with attempt to "defraud" the United States, which latter offense was considered in the case of *Bailey* v. *United States*, 13 Fed. (2d) 325 (C.C.A.). In each of these two instances cited the element of defrauding the United States is expressly made an essential ingredient of the crime defined.

(B) Nor is the element of "defrauding" the United States *explicitly* made an ingredient of the offense of defeating or evading one's income tax by reason of the essential definition of the words used in the statute defining this offense.

This indictment, and likewise the statute upon which it is founded, depends upon the essential definition and explicit

meaning of two principal verbs, viz., "defeat" and "evade." "Defrauding" is not an ingredient in the essential definition or the explicit meaning of either of these two verbs, such, for example, as "embezzlement."

The word "evade" has a widely varying meaning.

"Evade: v. i. 1. To escape; to slip away.
2. To attempt to escape; to practice artifice or sophistry for the purpose of eluding.

"Evade: v. t. 1. To get away from by artifice; to avoid by dexterity, subterfuge, address or ingenuity; to escape from cleverly; as, to evade a blow, a pursuer, a punishment; to evade the force of an argument.
2. Hence, to baffle or elude, or to be baffling or elusive to.
Syn. Avoid, escape, shun; baffle, foil, steal away from."

Webster's New International Dictionary (1931), p. 758.

So, too, the word "defeat" has an equally varying meaning:

"Defeat: v. t. 1. To undo; disfigure; weaken; destroy.
2. To render null and void, as a title; to frustrate, as hope; to deprive, as of an estate.
3. To overcome or vanquish, as an army; to check, to disperse, or ruin by victory; to overthrow.
Syn. Baffle, disappoint, frustrate."

Webster's New International Dictionary (1931), p. 584.

The burden is not on the appellee to show that "defraud" may not *sometimes* include the element of "defeat" or "evade." Rather is it that the Court, if the appellant is to prevail, must be satisfied that the essential meaning of the words "defeat" and "evade," as used in section 1114 (*b*) of the Revenue Act of 1926, *necessarily and always includes* "defraud."

To "defraud," a more comprehensive word, may ordinarily include the element "defeat" and "evade," but there is no authority for the proposition that "defeat" and "evade" necessarily include "defraud."

The word "defraud" has a wide and varied meaning.

The word "defraud" has been used very liberally in many cases that have come to this Court. Practically any wrong calculated to obstruct or impair the Government's efficiency, without regard to financial or property loss, has been held to be a "fraud" upon the United States.

Curley v. *United States,* 130 Fed. 1; certiorari denied, 195 U.S. 628.
Haas v. *Henkel,* 206 U.S. 462.
Hyde v. *Shine,* 199 U.S. 62.
Federal Trade Com. v. *United States,* 211 U.S. 370.
United States v. *Hutto,* 256 U.S. 524.

Obviously to hold, in a case like the case at bar, that "defeat" or "evade" is synonymous with "defraud," would render nugatory that portion of section 1110 (*a*) of the Revenue Act of 1926 which has to do with the three-year limitation for internal-revenue offenses. For it is difficult to conceive of a violation of an internal-revenue law which, applying the rule often laid down in conspiracy cases, would not amount to a "defrauding" of the United States.

"There must be attributed to Congress a tacit purpose to maintain a long established distinction between

offenses essentially different . . . a distinction whose practical importance in the criminal law is not easily over-estimated."

United States v. *Robinowich*, 238 U.S. 78.

The plain purpose of the proviso of section 1110 (*a*) is to apply the six-year period to every case in which "defrauding or attempting to defraud" the United States is an ingredient under the statute defining it.

United States v. *Noveck*, 271 U.S. 201.

It would seem that any doubt with respect to the present case ought to be removed by the decision in *United States* v. *Noveck*, 271 U.S. 201:

"Plaintiff in error contends that, as the perjury in this case is charged to have been committed in the making of an income tax return, and is especially alleged to have been committed for the purpose of defrauding the United States, the offense is brought within the proviso to section 1044, and that the six-year period of limitation applies. But the alleged purpose to defraud the United States is not an element of the crime defined in section 125, on which the indictment is based. That allegation does not affect the charge; it need not be proved and may be rejected as mere surplusage. In re Lane, 135 U.S. 443, 448, 10 S. Ct. 760, 34 L. Ed. 219. The construction of sections 125 and 1044 contended for by the government divides perjury into two classes. It makes one include offenses having the elements specified in section 125 and the other to include those containing the further element of purpose to defraud the United States. And that would apply similarly to every offense to which the three-year period fixed by section 1044 was applicable before the proviso

was added. The effect is to create offenses separate and distinct from those defined by specific enactments. Obviously that was not intended. The Act of November 17, 1921, merely added a proviso to a statute of limitations. *Statutes will not be read to create crimes, or new degrees or classes of crime, unless the purpose so to do is plain.* (Italics ours.) The language in question does not require the construction contended for. *Indeed it is not at all appropriate for the making of such classifications or the creation of offenses. Its purpose is to apply the six-year period to every case in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense. There are several such offenses. Section 37 (Comp. St. sec. 10201) affords an illustration.* But perjury as defined by section 125 does not contain any such element." (Italics ours.)

The reference of this Court, speaking in the Noveck case, to "Sec. 37" (title 18, sec. 88, U.S.C.) as an apt illustration of what Congress intended by the proviso clause in the Statute of Limitations suggests the propriety, as well as the force, of citing a number of statutes which involve violations of the revenue laws, and which are made to contain as a necessary ingredient, by *express* provision of the statutes creating them, the element of defrauding the United States. See the following:

U.S.C. title 26, sec. 261—Distiller defrauding or attempting to defraud the United States of tax.

U.S.C. title 26, sec. 306—Carrying on distillery without giving bond, etc., forfeitures.

U.S.C. title 26, sec. 316—Distiller's books—false entries, etc.

U.S.C. title 26, sec. 328—Rectifier's returns — unlawfully rectifying.

U.S.C. title 26, sec. 417—Forging stamps.

U.S.C. title 26, sec. 525—Withdrawing from unstamped containers for bottling, or bottling on brewery premises, etc.

U.S.C. title 26, sec. 555—Oleomargarine—fraud by manufacturer.

U.S.C. title 26, sec. 667—Fraud, forfeiture — white phosphorus matches.

U.S.C. title 26, sec. 775—Tobacco manufactured by one person for another or on shares; stamps; fraud.

U.S.C. title 26, sec. 790—Relanding tobacco or snuff unlawfully; penalty; forfeiture.

U.S.C. title 26, sec. 843—Cigars manufactured on shares, commission, or contract; stamping; fraud.

U.S.C. title 26, sec. 851—Exportation of manufacturing cigars; relanding cigars unlawfully; penalty.

U.S.C. title 26, sec. 1180—Forging, counterfeiting, or fraudulently using stamps.

U.S.C. title 26, sec. 1181—Removing or concealing articles with intent to defraud the United States.

U.S.C. title 26, sec. 1184—Possession of property with intent to sell in fraud of law, or to evade taxes.

U.S.C. title 26, sec. 1185—Same—seizure.

U.S.C. title 26, sec. 1186—Sales to evade tax; forfeiture; recovery.

U.S.C. title 26, sec. 1188—Disposing of or receiving empty stamped packages.

Aside from the revenue laws, many other Federal offenses might be pointed out which have the same import, *e.g.*, section 29 of the Criminal Code, considered in *Bailey* v. *United States*, 13 Fed. (2d) 325 (C.C.A.).

Conclusion.

It is therefore respectfully submitted that for the reasons herein set forth the judgment of the Court below ought to be affirmed.

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Attorneys for the Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 621.—October Term, 1931.

United States of America, Appellant, vs. William Randolph Scharton. Appeal from the District Court of the United States for the District of Massachusetts.

[April 11, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellee was indicted under § 1114 (b) of the Revenue Act of 1926,[1] the charge being attempts to evade taxes for 1926 and 1927 by falsely understating taxable income. In bar of the action he pleaded that the face of the indictment showed the offenses were committed more than three years prior to the return of a true bill. The plea was sustained and the indictment quashed, on the ground that the period of limitations is fixed by the first clause of § 1110 (a) of the Act[2], and not, as the appellant contended, in the proviso thereof. The basis of this ruling was that the offense defined by use of the words "evade or defeat" does not involve defrauding or attempting to defraud within the intent of the proviso.

The appellant contends fraud is implicit in the concept of evading or defeating; and asserts that attempts to obstruct or defeat the lawful functions of any department of the Government (*Haas*

[1] U. S. Code, Supp. V, Title 26, § 1266. "Any . . . person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall . . . be guilty of a felony. . . ."

[2] U. S. Code, Supp. V, Title 18, § 585. "No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense; *Provided*, That for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, the period of limitation shall be six years. . . ."

v. *Henkel,* 216 U. S. 462, 479-480) or to cheat it out of money to which it is entitled (*Capone* v. *United States,* 51 F. (2d) 609, 615) are attempts to defraud the United States if accompanied by deceit, craft, trickery or other dishonest methods or schemes, *Hammerschmidt* v. *United States,* 265 U. S. 182, 188. Any effort to defeat or evade a tax is said to be tantamount to and to possess every element of an attempt to defraud the taxing body.

We are required to ascertain the intent of Congress from the language used and to determine what cases the proviso intended to except from the general statute of limitations applicable to all offenses against the internal revenue laws. Section 1114 (a) makes wilful failure to pay taxes, to make return, to keep necessary records, or to supply requisite information, a misdemeanor; and § 1114 (c) provides that wilfully aiding, assisting, procuring, counselling, or advising preparation or presentation of a false or fraudulent return, affidavit, claim, or document shall be a felony. Save for that under consideration these are the only sections in the Revenue Act of 1926 defining offenses against the income tax law. There are, however, numerous statutes expressly making intent to defraud an element of a specified offense against the revenue laws.[3] Under these, an indictment failing to aver that intent would be defective; but under § 1114 (b) such an averment would be surplusage, for it would be sufficient to plead and prove a wilful attempt to evade or defeat. Compare *United States* v. *Noveck,* 271 U. S. 201, 203.

As said in the *Noveck* case, statutes will not be read as creating crimes or classes of crimes unless clearly so intended, and obviously we are here concerned with one meant only to fix periods of limitation. Moreover, the concluding clause of the section, though denominated a proviso, is an excepting clause and therefore to be narrowly construed. *United States* v. *McElvain,* 272 U. S. 633, 639. And as the section has to do with statutory crimes it is to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace so-called frauds not so denominated by the statutes creating offenses. *United States* v. *Hirsch,* 100 U. S. 33; *United States* v. *Rabinowich,* 238 U. S. 78,

[3] See U. S. Code, Tit. 26, §§ 261, 306, 316, 555, 667, 775, 843, 1180, 1181, 1184, 1186.

87-88; *United States* v. *Noveck, supra; United States* v. *McElvain, supra.* The purpose of the proviso is to apply the six year period to cases "in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense." *United States* v. *Noveck, supra.*

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.